

## REMARKS

### I. ELECTION

The Applicants hereby elect, with traverse, the claims of Group I, e.g., claims 12-13 and 37-51, drawn to a method of treatment for hereditary lymphedema.

In paragraph 5, the examiner further stated, “Additionally, **Inventions I-III named above are subject to further restriction.** Applicant is required to further elect a **distinct polymorphism or distinct combination of polymorphisms** as listed in the claims.” In response, the applicants elect any combination of polymorphism(s) in the kinase domains of VEGFR-3, as recited, e.g., in claim 33. As taught in the application, “Referring to SEQ ID NOs: 1 and 2, the two kinase domains of human wild type VEGFR-3 correspond to nucleotides 2546 to 2848 and 3044 to 3514 of SEQ ID NO: 1, which encode residues 843 to 943 and 1009 to 1165 of SEQ ID NO: 2.”

### II. TRAVERSAL

For all of the following reasons, the restriction is improper, and should be withdrawn, or the number of groups should be substantially reduced.

#### A. The second election relating to polymorphisms is legally improper.

In the statement of the election, the examiner indicated that “absent evidence to the contrary,” each sequence was presumed to constitute an independent and distinct invention. This assertion represents an improper burden shifting, because the MPEP indicates that a patent examiner has a burden to justify a restriction. In fact, the Patent Office has failed even to identify the different independent and distinct species that it is restricting in this second part of the restriction, leaving it to the applicants to guess.

#### B. The election relating to polymorphisms should not be applied to Group I

Even if an election of polynucleotide species is appropriate for this case, it is appropriate only for Group II, which relates to polynucleotides. The elected Group I relates to methods of treatment of lymphedema, and the examiner’s search burden for these method

claims will not be significantly increased by a need to search polynucleotide sequences. The two independent claims and many of the dependent claims have no specific limitations relating to a specific polymorphism.

**C. The election relating to polymorphisms should be withdrawn upon allowance of a generic claim.**

The assertion that this second portion of the restriction is not an “election of species” restriction also is disputed. It should be self-evident that variant Flt4 sequences share at least some common structure, demonstrating a relatedness. While the MPEP has provisions for requiring an election of species in some circumstances when genus claims are present, those provisions contemplate examination of generic claims, and restriction to a species only if no generic claim is ultimately allowed. To the extent the current restriction represents a departure from this practice, the applicants traverse, and request an explanation of the authority to do so. The applicants request that generic claims be examined in this application.

### **III. EXPLANATION OF AMENDMENTS**

The amendments to the claims address formalities and are not intended to diminish the scope of the claims in any way. For example, the amendments correct typographical errors, improve antecedent basis, eliminate redundancy, and the like. No new matter is added. The applicants reserve the right to pursue the subject matter of any original claims in related applications.

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Respectfully submitted,

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